

TRUSTS AND ESTATES

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I. INTRODUCTION

There were only four published decisions issued concerning trusts or estates during the *Survey* period. Three of the decisions concerned the scope of the probate court's subject matter jurisdiction¹ and one considered the relation back of actions taken by a person before being appointed personal representative.²

II. PROBATE COURT JURISDICTION

Although the probate court is a court of a limited jurisdiction, within its core areas the probate court is likely to find jurisdiction over most disputes. The probate court has exclusive jurisdiction over many claims³

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1. See *In re Geror*, 286 Mich. App. 132 (2009); *In re Rudell Estate*, 286 Mich. App. 391 (2009); *In re Lager Estate*, 286 Mich. App. 158 (2009).

2. See *Tice Estate v. Tice*, 288 Mich. App. 665 (2010).

3. The areas in which the probate court has exclusive subject matter jurisdiction are found in section 1302 of the Estates and Protected Individuals Code (EPIC). MICH. COMP. LAWS ANN. § 700.1302 (West 2000). Section 1302 provides that the probate court "has exclusive legal and equitable jurisdiction of all of the following:"

A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county to be administered, including, but not limited to, all of the following proceedings:

The internal affairs of the estate.

Estate administration, settlement, and distribution.

Declaration of rights that involve an estate, devisee, heir, or fiduciary.

Construction of a will.

Determination of heirs.

Determination of death of an accident or disaster victim under section 1208.

A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a

and concurrent jurisdiction⁴ over numerous other sorts of claims. There were three decisions during the *Survey* period regarding the probate

trust; or the declaration of rights that involve a trust, trustee, or trust beneficiary, including, but not limited to, proceedings to do all of the following:

Appoint or remove a trustee.

Review the fees of a trustee.

Require, hear, and settle interim or final accounts.

Ascertain beneficiaries.

Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.

Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.

Release registration of a trust.

Determine an action or proceeding that involves settlement of an irrevocable trust.

Except as otherwise provided in section 1021 of the revised judicature act of 1961, 1961 PA 236, MCL 600.1021, a proceeding that concerns a guardianship, conservatorship, or protective proceeding.

A proceeding to require, hear, or settle the accounts of a fiduciary and to order, upon request of an interested person, instructions or directions to a fiduciary that concern an estate within the court's jurisdiction.

MICH. COMP. LAWS ANN. § 700.1302.

4. The probate court's concurrent jurisdiction is found in section 1303 of EPIC. MICH. COMP. LAWS ANN. § 700.1303 (West 2000). Section 1303 provides:

In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:

Determine a property right or interest.

Authorize partition of property.

Authorize or compel specific performance of a contract in a joint or mutual will or of a contract to leave property by will.

Ascertain if individuals have survived as provided in this act.

Determine cy-pres or a gift, grant, bequest, or devise in trust or otherwise as provided in 1915 PA 280, MCL 554.351 to 554.353.

Hear and decide an action or proceeding against a distributee of a fiduciary of the estate to enforce liability that arises because the estate was liable upon some claim or demand before distribution of the estate.

Impose a constructive trust.

Hear and decide a claim by or against a fiduciary or trustee for the return of property.

Hear and decide a contract proceeding or action by or against an estate, trust, or ward.

Require, hear, or settle an accounting of an agent under a power of attorney.

Bar an incapacitated or minor wife of her dower right.

If the probate court has concurrent jurisdiction of an action or proceeding that is pending in another court, on the motion of a party to the action or proceeding

court's subject matter jurisdiction.⁵ All of those decisions held that the probate court had at least concurrent jurisdiction to hear the matters presented.⁶

The first published decision rendered during the *Survey* period was *In re Geror*.⁷ In *Geror*, a dispute arose as to whether attorney fees incurred on behalf of the guardian of a developmentally disabled person are allowable expenses under the No-Fault Insurance Act.⁸ The probate court found that the attorney fees incurred on the developmentally disabled person's behalf were allowable expenses.⁹ The insurer appealed, claiming in part that the probate court lacked jurisdiction.¹⁰

The Michigan Court of Appeals made short shrift of that argument, finding that the probate court had concurrent jurisdiction to hear a contract proceeding.¹¹ "Under MCL 700.1303(1)(i), the probate court has jurisdiction to '[h]ear and decide a contract proceeding or action by or against an estate, trust, or ward.' The statute imposes no limits on the types of contract actions."¹² Because the developmentally disabled person was a "ward[,]"¹³ the probate court had jurisdiction to hear the dispute regarding the insurance contract.¹⁴

and after a finding and order on the jurisdictional issue, the other court may order removal of the action or proceeding to the probate court. If the action or proceeding is removed to the probate court, the other court shall forward to the probate court the original of all papers in the action or proceeding. After that transfer, the other court shall not hear the action or proceeding, except by appeal or review as provided by law or supreme court rule, and the action or proceeding shall be prosecuted in the probate court as a probate court proceeding.

The underlying purpose and policy of this section is to simplify the disposition of an action or proceeding involving a decedent's, a protected individual's, a ward's, or a trust estate by consolidating the probate and other related actions or proceedings in the probate court.

MICH. COMP. LAWS ANN. § 700.1303 (West 2000).

5. See *In re Geror*, 286 Mich. App. 132 (2009); *In re Rudell Estate*, 286 Mich. App. 391 (2009); *In re Lager Estate*, 286 Mich. App. 158 (2009).

6. See *Geror*, 286 Mich. App. at 134; *Rudell Estate*, 286 Mich. App. at 393 n.1; *Lager Estate*, 286 Mich. App. at 162-64.

7. 286 Mich. App. 132.

8. *Id.* at 134-35 (citing the No-Fault Insurance Act, MICH. COMP. LAWS ANN. § 500.3101 *et seq.*).

9. *Id.* at 133.

10. 286 Mich. App. at 133.

11. *Id.* at 134.

12. *Id.* at 134 (quoting *In re Shields*, 254 Mich. App. 367, 369 (2002)).

13. Under EPIC, "'Ward' means an individual for whom a guardian is appointed." MICH. COMP. LAWS ANN. § 700.1108(a) (West 2000).

14. *Geror*, 286 Mich. App. at 134.

Likewise, in *In re Rudell Estate* the court of appeals held that the probate court's concurrent jurisdiction included jurisdiction to hear a quiet-title action.¹⁵

Lest there be any confusion on this matter, we wish to make clear that the probate court had jurisdiction to hear and resolve the present quiet-title dispute. The probate court has concurrent legal and equitable jurisdiction to determine property rights and interests with respect to an estate of a decedent, a protected individual, a ward or a trust. MCL 700.1303(1)(a).¹⁶

In *Rudell*, Jane Rudell had transferred her home into her revocable trust in 1982.¹⁷ On February 6, 2000, Jane Rudell signed two deeds, one conveying the home from her revocable trust to herself individually and a second deed from Jane Rudell as an individual to William A. Rudell.¹⁸ Although the deeds were signed, they were not recorded until June 3, 2003, which was the date of Jane Rudell's death.¹⁹ In October 2003, the personal representative of Jane Rudell's estate and the trustee of Jane Rudell's trust filed suit against William A. Rudell seeking to overturn the conveyances.²⁰ Because this dispute concerned whether the decedent's estate or trust held title to the real estate, the dispute clearly was within the probate court's jurisdiction.²¹

In contrast, the court of appeals' reasoning in *In re Lager Estate*²² is not as clear. At first blush, *Lager* appears merely to follow the pattern of the other decisions by holding that the probate court had concurrent jurisdiction to determine ownership of a decedent's personal savings plan (PSP) through General Motors.²³ However, a closer reading reveals that the court of appeals appears to have expanded the probate court's jurisdiction beyond those items identified in MCL sections 700.1302 and 700.1303 to include matters that could be best compared to the ancillary

15. *Rudell*, 286 Mich. App. at 393 n.1.

16. *Id.*

17. *Id.* at 394.

18. *Id.* at 394-95.

19. *Id.* at 395.

20. *Id.* at 395.

21. *See Rudell*, 286 Mich. App. at 395-96. The personal representative had alleged that the deed was invalid due to the failure of consideration, lack of capacity, fraud, undue influence, coercion. *Id.* The probate court granted the personal representative's motion for summary disposition on the failure of consideration issue. *Id.* Because the probate court never reached the capacity and undue influence issues, the majority of the decision is outside of the scope of this *Survey* article.

22. *Lager*, 286 Mich. App. at 158.

23. *Id.* at 163.

jurisdiction found in federal courts.²⁴ The court in *Lager* ruled that “[t]he probate court had subject-matter jurisdiction over the estate and its assets, including determining the assets that were not part of the estate, in light of the nature of the petition filed with the probate court.”²⁵

Ernest J. Lager was a participant in General Motors’ PSP.²⁶ In 1992, while unmarried, Ernest designated his son, Eric Lager, as the primary beneficiary of his PSP.²⁷ In 1997, Ernest married Georgia Forbes-Lager.²⁸ Ernest died in 2005.²⁹ Georgia contacted the plan administrator, “who paid the [benefits] to her as the surviving spouse.”³⁰ Eric Lager then petitioned the probate court claiming that he was entitled to the benefits pursuant to the beneficiary designation Ernest completed in 1992.³¹ Georgia argued that as Ernest’s spouse, ERISA required that the benefits were to be paid to her.³² The probate court awarded the PSP to Eric Lager.³³ Georgia Lager appealed claiming in part that the probate court lacked subject matter jurisdiction over the PSP.³⁴

The court of appeals disagreed and held that the probate court had subject matter jurisdiction over the PSP.³⁵ The court of appeals characterized the dispute as a proceeding to “determine the property rights in the assets of the estate.”³⁶ The court of appeals reasoned that because the petition requested the probate of the estate and the determination of the validity of the will,³⁷ the probate court had jurisdiction to determine the other issues presented in the petition; “[t]o require the probate court to examine each individual item and partition

24. *Id.* at 164.

25. *Id.*

26. *Id.* at 159-60.

27. *Id.*

28. *Lager*, 286 Mich. App. at 159-60.

29. *Id.*

30. *Id.* at 160.

31. *Id.* at 159-60.

32. *Id.* at 164. Although ERISA is a federal statute, it grants “concurrent jurisdiction to state and federal courts for claims brought by a beneficiary to recover benefits due to him or her under the terms of the plan, to enforce the beneficiary’s rights under the terms of the plan, or to clarify the beneficiary’s rights to future benefits under the terms of the plan.” *Id.* at 164 (citing *Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 823 n.3 (1990) (citing 29 U.S.C. § 1132(a)(1)(B))).

33. *Lager*, 286 Mich. App. at 161.

34. *Id.* at 161-62.

35. *Id.* at 163 (stating that “[t]he probate court had subject-matter jurisdiction over the estate and its assets, including determining the assets that were not part of the estate, in light of the nature of the petition filed with the probate court”).

36. *Id.*

37. Both of which are clearly within the probate court’s exclusive jurisdiction. See MICH. COMP. LAWS ANN. § 1302(a).

the consideration of some items to the circuit court would not be an efficient use of resources for the court as well as the litigants.”³⁸

The problem with the *Lager* decision is that the dispute regarding the PSP did not concern the estate at all.³⁹ Neither Georgia nor Eric was claiming that the PSP should have been paid to the decedent’s estate.⁴⁰ Rather, they were both arguing that the benefits should have been paid to them individually.⁴¹ As such, the court concluded that the PSP was not an asset of the estate.⁴²

The court of appeals’ judicial efficiency argument is also suspect. Notably, the court of appeals fails to cite any authority to support this portion of its opinion.⁴³ Nothing in section 1302 or 1303 suggests that judicial efficiency is a basis for probate court jurisdiction.⁴⁴

III. RELATION BACK

In *Estate of Tice*, a case of first impression,⁴⁵ the court of appeals considered the impact of Section 3701 of EPIC,⁴⁶ which provides that a personal representative’s powers relate back in time to periods before appointment if they were beneficial to the estate.⁴⁷

Tice concerned whether the decedent, Gloria Tice, had validly transferred title to certain real estate to one of her caregivers, Barbara Tice.⁴⁸ Gloria Tice quitclaimed the property to Barbara Tice in 1999.⁴⁹

38. *Lager*, 286 Mich. App. at 163.

39. *See id.* at 159-60.

40. *See id.* at 159-67.

41. *Id.* at 159-61.

42. *Id.* at 161.

43. *See generally id.* at 163.

44. *See* MICH. COMP. LAWS ANN. §§ 700.1302-03.

45. *Tice*, 288 Mich. App. at 670.

46. MICH. COMP. LAWS ANN. § 700.3701 (West 2006). Section 3701 provides:

A personal representative’s duties and powers commence upon appointment. A personal representative’s powers relate back in time to give acts by the person appointed that are beneficial to the estate occurring before appointment the same effect as those occurring after appointment. Subject to sections 3206 to 3208, before or after appointment, a person named as personal representative in a will may carry out the decedent’s written instructions relating to the decedent’s body, funeral, and burial arrangements. A personal representative may ratify and accept an act on behalf of the estate done by another if the act would have been proper for a personal representative.

47. *Id.*

48. *Tice*, 288 Mich. App. at 667.

49. *Id.*

Barbara then transferred the real estate to her son, Scott Tice.⁵⁰ Gloria Tice died in 2004.⁵¹ Her son, Robert Porter, was named the personal representative of her estate.⁵²

On April 16, 2008, Robert Porter, in his individual capacity, filed suit against Barbara and Scott Tice.⁵³ Barbara and Scott defended by claiming that Robert Porter was not the proper party and that the suit needed to be brought by Gloria Tice's estate.⁵⁴ The probate court agreed, but permitted Robert Porter to file an amended complaint.⁵⁵ Robert Porter filed an amended complaint on November 3, 2008, this time as personal representative of the estate.⁵⁶ The applicable statute of limitations, however, expired in June 2008.⁵⁷ Thus, the issue was whether the November 3, 2008 complaint related back to the April 16, 2008 complaint.⁵⁸

The court of appeals held that the amended complaint related back to the initial complaint for two reasons.⁵⁹ First, because Robert Porter was Gloria's sole heir, he "had an interest in the subject matter of the controversy" and thus he could take advantage of the former action.⁶⁰ Second, under MCL section 700.3701, Robert Porter's commencement of the suit should be treated as if he were in effect appointed personal representative.⁶¹ If that were the case, the only defect in the complaint would have been the caption.⁶²

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Tice*, 288 Mich. App. at 667.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 670.

60. *Tice*, 288 Mich. App. at 670-71.

61. *Id.* (citing MICH. COMP. LAWS ANN. § 700.3701 (West 2009)).

62. *Id.*